

HOUSE BILL REPORT

HB 2465

As Reported by House Committee On:
Judiciary

Title: An act relating to collection of legal financial obligations by county clerks.

Brief Description: Giving county clerks authority to withhold and deliver funds from criminal defendants who owe legal financial obligations.

Sponsors: Representatives Warnick, O'Brien, Blake, Campbell and Kelley.

Brief History:

Committee Activity:

Judiciary: 1/15/08, 1/18/08 [DP].

Brief Summary of Bill

- Authorizes county clerks to issue and serve orders to withhold and deliver and notices of debt for the purpose of collecting past-due legal financial obligations.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 10 members: Representatives Lantz, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Warnick, Assistant Ranking Minority Member; Ahern, Kirby, Moeller, Pedersen, Ross and Williams.

Minority Report: Do not pass. Signed by 1 member: Representative Flannigan.

Staff: Lara Zarowsky (786-7123).

Background:

Under the Sentencing Reform Act, the Department of Corrections (DOC) is responsible for supervising offenders whose sentence includes the payment of legal financial obligations (LFOs). Legal financial obligations are court-imposed obligations to pay any of the following:

- restitution to the victim;
- statutorily imposed crime victim's compensation fees;

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- court cost;
- county or inter-local drug fund assessments;
- court-appointed attorneys' fees and costs of defense;
- fines;
- reimbursement for emergency response expenses in cases of vehicular assault or vehicular homicide involving a driving while under the influence (DWI) conviction; and
- any other financial obligation assessed to the offender as a result of a felony conviction.

In 2003, the Legislature passed ESSB 5990 providing that the DOC must supervise an offender's compliance with the payment of LFOs only during the period within which the offender is incarcerated or while the DOC is authorized to supervise the offender in the community. The DOC is not responsible for supervising the offender during any subsequent period of time that the offender is under the court's supervision for payment of LFOs. During that period, county clerks supervise an offender's compliance with payment of LFOs. The county clerks are authorized to collect unpaid LFOs at any time the offender remains under the jurisdiction of the court for purposes of his or her LFOs.

When an offender completes his or her term of supervision, or if an offender is not subject to a supervision order in the community, the DOC must notify the Administrative Office of the Courts (AOC) and provide information to enable the county clerk to monitor the payment of the remaining LFOs.

The AOC provides billing services and maintains a statewide database of offender payments, based on payment information submitted by the county clerks. The Washington Association of County Officials reports annually to the Legislature on the amounts of LFOs collected by the county clerks.

Upon transferring responsibility for collecting criminal LFO payments from the DOC to the county clerks, ESSB 5990 legislatively enabled the county clerks to take many, but not all, administrative collection actions previously reserved to the DOC. The DOC's authority to issue notices of debt and orders to withhold and deliver was not extended to county clerks under ESSB 5990.

Order to Withhold and Deliver

The DOC may issue an "order to withhold and deliver" when an offender's court-ordered legal financial obligation payment is past-due, provided that the offender's judgment and sentence or subsequent order to pay includes a statement that other income withholding action may be taken without further notice to the offender.

An order to withhold and deliver may be issued to any person or entity the DOC has reason to believe is in possession of property that is due, owing, or belonging to the offender. The order directs such persons or entities to withhold the property and deliver it to the appropriate clerk of the court, upon expiration of a 20-day answer period. The property is then applied toward satisfaction of the offender's past-due LFOs.

Notice of Debt

A notice of debt is necessary only when an offender's judgment and sentence or subsequent order to pay does not include a statement that income-withholding action may be taken without further notice to the offender. A notice of debt notifies an offender that income-withholding action will be taken to enforce and collect past-due payments on his or her court-ordered LFOs.

A notice of debt is effective only if the offender's monthly LFO payment is past-due. The notice alerts the offender that collection will be effected through either a notice of payroll deduction, or an order to withhold and deliver. The notice of debt must include statements: (1) of the total LFO and monthly payment amount; (2) that earnings are subject to a notice of payroll deduction; (3) that earnings or property or both are subject to the order to withhold and deliver; and (4) that net proceeds will be applied to satisfaction of the offender's outstanding LFOs.

The notice of debt is effective 20 days after it is served on or refused by the offender.

Joint Bank Accounts

Collection action by the DOC against a joint bank account or any other funds subject to community property laws require 20 days notice to all affected parties stating that (1) the funds are subject to potential withholding, and (2) the non-obligated party may contest the withholding of his or her interest in the funds. The non-obligated person has 10 days to contest the withholding of his or her interest in the funds by filing a petition with the DOC. If such a petition is not received, the DOC is authorized to proceed with the collection action.

Summary of Bill:

Order to Withhold and Deliver

Authority currently held by the DOC to issue an order to withhold and deliver for the purpose of satisfying an offender's past-due LFOs is extended to county clerks.

Notice of Debt

Authority currently held by the DOC to issue a notice of debt to an offender, for the purpose of notifying the offender that income-withholding action is being taken against him or her in order to satisfy past-due LFO payments, is extended to county clerks.

Joint Bank Accounts

A non-obligated person may file a petition with the DOC or superior court contesting the withholding of his or her interest in the account or funds subject to collection action. The entity serving notice of potential withholding (the DOC or county clerk) is charged with notifying a non-obligated person of his or her right to file a petition.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support) We need to streamline and simplify the court and DOC procedures and clarify the role of the clerks. This bill will accomplish this and will help offenders get the local support they need to comply with legal financial obligations. This is one of two priority bills for the Washington Association of County Officials (WACO). Since clerks have taken responsibility for collection of financial obligations, there has been an increase of 39.8 percent in collections state-wide. Clerks already have the ability to assign assets and garnish wages, but these are cumbersome processes. The process to withhold and deliver is easier to accomplish, and a tool that will assist the clerks to continue increasing collections and become even more effective.

Thurston County has engaged in collecting legal financial obligations for some time before the mandate to do so from the Legislature due to an independent agreement with the DOC and has seen some decrease in recidivism. This is a good idea because restitution to victims is paid first. An update to the judgment and sentence form will facilitate providing notice to offenders without burdening the DOC.

(In support with concerns) The DOC is not opposed to this bill, but has concerns for how it will be applied to offenders who are in custody and under the supervision of the DOC on other charges. The DOC has an interest in teaching fiscal responsibility by requiring savings and encouraging vocational training. An automatic deduction schedule is set up for any money coming into an inmate's account, and those funds are distributed according to the kind of financial obligations an offender is under. The schedule leaves a modest amount for discretionary spending and includes a mandatory savings account that an offender can't touch until released. The savings account is intended to give an offender some funds for food, shelter and transportation upon release. These mandatory savings accounts are not protected under this bill from an order to withhold and deliver. If these funds are reduced, it increases the impoverishment of the offender upon release, and this increases the risk to the community that an offender will re-offend. Offenders who had funds in a mandatory savings account and were released between July 1 and September 30 of 2007, the average amount in the account was \$120.00. An increase in orders to withhold and deliver impacts an offender's ability to successfully reenter the community. When we release an offender in an impoverished state, that is an increased risk to the community.

(Opposed) None.

Persons Testifying: (In support) Representative Warnick, prime sponsor; Betty Gould, Thurston City Clerks; and Ruth Gordon, Washington State Association of County Clerks, Washington Association of County Officials

(In support with concerns) Dick Morgan and Melanie Smith, Washington State Department of Corrections.

Persons Signed In To Testify But Not Testifying: None.